IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.5213 OF 2003

Mr.Umesh Manakapure h/f Mr.R.V. More for the Petitioner.

Mr.Vijay Patil for Respondents Nos. 1 to 4.

Office Notes, Office Memoranda of Coram, appearances, Court's order or directions	Court's or Judge's orders
	CORAM: D.K.DESHMUKH, J.
	DATED: 8TH JUNE,2005

P.C.:

Rule. Returnable forthwith. Heard finally by consent of parties.

1. By the order impugned in the petition, Joint Civil Judge, Jr.Division, Islampur has framed the following issue:

"Whether the present suit is tenable under the Hindu Law?"

It is common ground before me that this is not an issue of law. Even

the trial court has directed the parties to lead oral evidence on this issue. Obviously, therefore, this could not have been tried as a preliminary issue. The order impugned is, therefore, set aside. The trial court is directed to first frame the issues. After the issues are framed, the parties shall be at liberty to apply to the trial court for trial of any of the issues as a preliminary issues. In case such an application is made, the trial court shall decide the same in accordance with law.

Rule made absolute accordingly with no order as to costs.

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